IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9168 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASH ALIAS GUDHU DINKARRAVOMALKE

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9168 of 2003

MR SATISH R PATEL for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order passed by the Police Commissioner, City of Baroda on 24.1.2003 in exercise of

powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short) directing detention of the petitioner declaring him to be the bootlegger. The petitioner is under detention in pursuance of the said order dated 24.1.2003.

The grounds served upon the petitioner and placed on record reveal that the offences, in all four, under sec. 66B, 65E and 81 of the Bombay Prohibition Act came to be registered against the present petitioner on 21.4.2001, 21.4.2001, 7.7.2002 and 18.1.2003. It was alleged that the petitioner was selling illegal liquor and was picking quarrel with the citizen. The detaining authority, in addition to this, also relied upon the statements of two witnesses recorded by the proposing authority on 19.1.2003 and verified by the detaining authority on 21.1.2003. Out of that, one witness alleged to have beaten by the petitioner on 21.12.2002 on suspicion that the witness informed the police about his illegal activities. The other witness reported a incident of 24.12.2002 to whom the petitioner alleged to have forced to keep his illegal liquor in the house of the witness. On refusal, the witness was beaten. The names of the witnesses were not declared as per sec. 9(2) of the PASA Act. Considering this material, the order impugned in this application came to be passed.

Ld. advocate Mr. SR Patel for the petitioner and Mr. RM Chauhan ld. AGP for the respondents were heard at length. Ld. AGP places on record the affidavit in reply of the detaining authority which is taken on record.

Amongst the various contentions raised on behalf of the petitioner, the ground which emphatically advanced was in respect of breach of Constitutional guarantee under Article 22(5) of the Constitution of India. The fact which is admitted on record further indicates that vide his letter dated 5.6.2003, the petitioner made representation to Police Commissioner, City of Baroda in which he demanded to supply the copy of FSL Report in in respect of CR No. III 62/2003 registered against the petitioner at City Police Station, Baroda. The said representation was forwarded by the Police Commissioner, City of Baroda to the Government. The State Government though directed the Police Commissioner, City of Baroda to supply said document to the petitioner, who rejected the representation of the petitioner vide order dated 16.6.2003. The Police Commissioner, City of Baroda vide his letter dated 2.7.2003 informed the petitioner that the said copy of the FSL Report shall be supplied to the

petitioner by the Police Commissioner to the petitioner vide his letter dated 5.7.2003. When we peruse the said FSL report, it clearly indicates that the report was forwarded to the police on 19.2.2003 and even then on 2.7.2003 the document was not supplied on the ground of non-availability and was supplied only on 5.7.2003. In the meanwhile, even if the contention was raised by the petitioner before the State Government that such a document was not supplied to him, his representation came to be rejected by the State Government. Though the FSL Report was forwarded by the Laboratory on 19.2.2003 to the Police but the same was denied on the pretext that the document was not available with the Police Commissioner and could be made available only by his letter dated 5.7.2003. This fact on record clearly establishes contravention of Constitutional guarantee given to the citizen vide Article 22(5) of the Constitution of India. This petition is required to be allowed and the order of detention is required to be quashed and set aside on this ground alone.

In this view of the matter, this special civil application is allowed. The order of Police Commissioner, City of Baroda dated 24.1.2003 directing detention of the petitioner under the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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